



RAVI BATRA

**THE BATRA BUILDING
142 LEXINGTON AVE.
NEW YORK, NEW YORK 10016
212-545-1993**

RAVIBATRALAW@AOL.COM
FAX: 212-545-0967

July 26, 2007

By Fax 914-993-1656

**Brian Murphy, Esq.
Strecich Murphy & Lammers, LLP
828 South Broadway, Suite 201
White Plains, NY 10591-6650
914-674-4100**

Re: Your Letters of 7/3/07, 7/18/07 and 7/20/07 and our receipt of our ordered-transcript on 7/23/07. *Pane v. Town of Greenburgh et al.*, 07 CV 3216 (LMS)

Dear Brain,

After a review of the Court's Order contained in the Transcript of the 6/28/07 Conference, I must inform you that your interpretation of the Court's Order is exactly incorrect and that my recollection exactly correct, as we discussed this on or about 7/3/07. While I understand the necessary "holdback" caused by your desire to wait for the receipt and review of the Transcript, which you were lucky to get it sooner than the undersigned, it is absolutely clear that you and other defense counsel are not authorized to be present at the photo ID viewing by my client, and that the Court directed, that in the event I wanted to videotape or have any member of my team present, that as to that Photo ID viewing and recording that that would not cause a breach of the attorney-client privilege between the undersigned and our client. That this production by you was to be done within 1 week of 6/28/07 obviously has made us all lose literally a month, and all dates will need to be reset accordingly given this month long sojourn.

See, Transcript at P.14 - P15, to wit:

“ 19 The photographs are to be produced to plaintiff's
20 counsel for attorney's possession only. Counsel is to maintain
21 them in a secure fashion, is not to copy or otherwise show them
22 to anyone, except his own client. The viewing of those
23 photographs may be monitored, if counsel chooses, by an
24 investigator or paralegal or other employee of counsel as
25 deemed appropriate.

MARY M. STATEN, CSR, RPR, RMR
(914) 390-4027

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1 Counsel may videotape the identification procedure, if
2 he wishes. Such action would not vitiate any attorney-client
3 privilege, as far as I'm concerned, at this point, but it may

4 be protective. But if such videotape procedure is used, that
5 would be without taking any video images of the photographs of
6 the officers that are used during the procedure.

7 *After the procedure is complete, plaintiff's counsel*
8 *is to return the photographs to Mr. Murphy's office, again*
9 *without making copies. "* (emphasis added)

Obviously, if defense counsel were permitted to be present, there would be no direction to return same to Mr. Murphy's Office. Of course, no such direction in this case, under the present circumstances, could have been Ordered as that would meet an objection by the undersigned and be a clear breach, indeed vitiation, of the attorney-client privilege that my client enjoys with her counsel. Therefore, the position you adopted and accurately contained in your letter of 7/3/07 is incorrect.

While I understand that your recollection of the Order on 7/3/07 objected to the Order as transcribed, your maintaining such position post-receipt of transcript requires you, as the Objectant, to notify the Court particularly, since now, we have lost a month.

Perhaps, the dates can be reset at our currently scheduled Conference on 8/10/07 11AM assuming your immediate production of the Photos, with name-identification on their back only.

I also inquire if you have submitted the personnel files to the Court for *in-camera* review. In addition, I enclose a copy of my 2/26/07 Letter to David Fried regarding document and information production and preservation of evidence.

Finally, when may I receive these Photos as Ordered by the Court? I will call you as well.

In passing, I note that John Doe #3 with Reddish hair, identified as P.O. Edward Olsen was recently promoted and a subject of *sue sponte* media attention by *Journal News* and *News 12* last Thursday and Friday.

With regards,

Sincerely yours,
The Law Firm of Ravi Batra, P.C.

By Ravi Batra (RB4299)
Counsel to Gina Pane

Encl: 2/26/07 Letter

C:

Tony Castro, Esq. (By Fax 914-939-4253)

Thomas J. Troetti, Esq.
(914) 946-1875; Fax 914-949-1342

Andrew C. Quinn, Esq.
Quinn & Mellea, L.L.P.
(914) 997-0555; Fax: 914-997-0550

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